

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JANIS MATHEWS,

Plaintiff,

v.

AMPCO SYSTEM PARKING d/b/a  
AMPCO SYSTEM PARKING, INC.,

Defendant.

CASE NO. C05-1176JLR

ORDER

**I. INTRODUCTION & ANALYSIS**

This matter comes before the court on a motion from Ampco System Parking, Inc. (“Ampco”) for a protective order governing discovery in this employment discrimination action (Dkt. # 10). The parties have made substantial progress toward agreeing upon a protective order. Only a few issues remain in dispute.

For purposes of resolving the remaining disputes, the court will cite the version of the proposed protective order contained as an attachment to Plaintiff’s counsel’s December 6, 2005 e-mail to Defendant’s counsel. Preece Decl. Ex. C. This document, which the court will refer to as the “Protective Order,” has the advantage of simultaneously displaying the parties’ agreed and disputed language.

1 **A. What is “Confidential Information”?**

2 The parties have agreed to allow each other to designate some documents that they  
3 produce during discovery as “confidential.” The party receiving the “confidential”  
4 document may then disclose the document only to authorized persons. The parties’  
5 dispute is over which documents qualify for a “confidential” designation.

6 As a practical matter, regardless of the definition of “confidential,” a party may  
7 designate any document it wishes as “confidential.” If the other party feels that the  
8 designation is inappropriate, it may move the court for relief. Protective Order ¶ 12  
9 (largely undisputed “Objection to Designation” clause). Thus, whatever definition the  
10 parties agree upon, the court is the ultimate arbiter of confidentiality under the order.

11 The court adopts a definition of “confidential” that incorporates the parties’ agreed  
12 upon definition and uses the Federal Rules of Civil Procedure to supplement that  
13 definition. The parties have agreed that the following categories of documents are  
14 confidential: “personnel files of employees,” “revenue information regarding customers,”  
15 “business organizational plans,” “Hotline call documentation,” “discrimination or  
16 harassment investigation records,” the “Workplace Investigation Manual,” the  
17 “Supervisors Workbook,” “employee compensation information,” and “anonymous  
18 emails from and to an individual who for purposes of this protective order shall be  
19 referred to as ‘anonymous no. 1’.” Protective Order ¶ 1. All other categories of  
20 confidential information and a more general definition of “confidential” are disputed.  
21 The court, however, is in a poor position to resolve those disputes. The parties have a  
22 much better grasp on the type of information they wish to protect. Where they agree on  
23 categories of confidential information, the court is willing to enforce their agreement.  
24 Where they disagree, the court turns to the provisions of the Federal Rules of Civil  
25 Procedure. Fed. R. Civ. P. 26(c). The court will therefore enter a protective order under  
26  
27  
28

1 which the definition of “confidential” is documents falling within the undisputed  
2 categories named above, in addition to any document that would be considered  
3 confidential under Fed. R. Civ. P. 26(c).

4 **B. Are Certain Documents Confidential?**

5 Ampco asserts that three specific documents are confidential: the Ampco System  
6 Parking Employee Handbook, the Ampco System Parking Employee Rules and  
7 Regulations, and the Ampco Code of Business Conduct. To support their assertion,  
8 Ampco offers the declaration of Robert Honey, a human resources manager in its  
9 Northwest Region. Although Mr. Honey assures the court that the documents are  
10 “proprietary” or “highly proprietary,” he does not explain why. Honey Decl. ¶ 7.  
11 Employee manuals and rules and regulations, which are presumptively distributed widely  
12 within the Ampco workforce, are not the sort of document that one would expect to  
13 contain confidential information. Mr. Honey does not attach copies of the documents for  
14 the court’s review. For the present, Ampco has failed to establish that the documents are  
15 confidential.  
16  
17

18 Ampco also asserts that “employee compensation policies” are confidential. The  
19 court has no way of judging whether this broad category of documents is confidential or  
20 not. Once the parties have entered a protective order, Ampco must decide whether to  
21 designate such documents as confidential under the definition of “confidential” the court  
22 established above. Plaintiff must then decide whether or not to challenge the designation.  
23

24 **C. Does the Protective Order Apply to Documents Not Produced in Discovery?**

25 Ampco seeks a ruling that the protective order should apply to Ampco documents  
26 that Plaintiff obtained outside of the discovery process. The court has not seen these  
27 documents. Ampco suggests that these documents are subject to a pre-existing  
28

1 confidentiality agreement between it and Plaintiff. The court has no means of evaluating  
2 this claim without viewing the documents and the confidentiality agreement.

3 Absent a stipulation between the parties, the protective order in this action will  
4 govern discovery and nothing more. Other laws or agreements may govern the use of  
5 documents and information obtained outside of discovery, but that issue is not yet before  
6 the court.

7  
8 **D. Does the Protective Order Apply Only to Documents or to Information As  
9 Well?**

10 Ampco insists that the protective order should protect confidential information  
11 whether it is contained in a document or not. Plaintiff seems to suggest that only  
12 documents should fall under the protective order. For the most part, the court is in no  
13 position to resolve this dispute. As a matter of logic and convenience, the parties should  
14 provide a means for protecting all confidential information produced during discovery.  
15 For example, the parties already agree that specific employee salary information should  
16 be confidential. Surely this information is no less confidential because it comes from the  
17 mouth of a deponent rather than from a document. Unfortunately, the parties have made  
18 no comprehensive provision for this situation.<sup>1</sup> The court declines to impose one on  
19 them.

20  
21 The parties have agreed that some documents should be confidential. The court  
22 thus rules that the protective order in this action will contain provisions that prevent the  
23 parties from disclosing information that they learned from a document designated

---

24  
25 <sup>1</sup>The parties have provided that if a deponent testifies about a confidential document, that  
26 portion of his or her testimony should be designated confidential. Protective Order ¶ 11  
27 (“Depositions/Other Discovery”). It seems a relatively easy matter to modify this section to  
28 apply not only to confidential testimony that arises directly from a document, but to confidential  
testimony generally.

1 “confidential.” Any other ruling would make the “confidential” designation on a  
2 document meaningless. If the parties wish to draft a more expansive protective order that  
3 applies to confidential testimony obtained during discovery, and other non-documentary  
4 confidential information, the court will consider it.

5 The above discussion should be sufficient to resolve the parties dispute over the  
6 cross-reference to Clause 4 of the Protective Order contained in Clause 5.

7  
8 **E. Can the Parties Use Confidential Documents for Purposes Beyond This  
9 Litigation?**

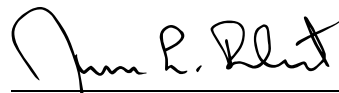
10 The Protective Order contains a clause that permits Ampco to use any confidential  
11 document that Plaintiff produces to defend itself in other litigation. Protective Order ¶ 5  
12 (paragraph that begins “Nothing contained in this Protective Order . . .”). Plaintiff is  
13 willing to agree to this provision only if Ampco will grant her the reciprocal right to use  
14 Ampco confidential documents in other litigation.

15 The court will not impose a wholly one-sided provision in the protective order. If  
16 Ampco wishes blanket permission to use Plaintiff’s confidential documents in other  
17 litigation, it must grant the same permission to Plaintiff.

18 **II. CONCLUSION**

19 For the foregoing reasons, the court GRANTS Defendants’ motion (Dkt. # 10) to  
20 the extent that it seeks a protective order. The parties shall submit a joint protective order  
21 that incorporates the court’s rulings, along with any other provisions to which they agree.  
22 The court will enter that order as the protective order in this action.

23  
24 Dated this 10th day of January, 2006.

25  
26 

27 James L. Robart  
28 United States District Judge